

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE CITY OF BLAINE, *et al.*,

Plaintiffs,

v.

GOLDER ASSOCIATES, INC., *et al.*,

Defendants.

No. C03-0813L

ORDER DENYING PLAINTIFFS'
MOTION IN LIMINE REGARDING
ALLEGED ACTS OF NEGLIGENCE
ON THE PART OF THE
CITY OF BLAINE

This matter comes before the Court on “Plaintiffs’ Motion in Limine Regarding Alleged Acts of Negligence on the Part of the City of Blaine (as it Pertains to the Subrogation/Indemnity Claims Only).” Dkt. # 219. Plaintiffs seek an order excluding from trial all evidence or arguments tending to show that the City of Blaine was negligent as that term is used in the hold harmless provision of the Professional Services Agreement between the City and Golder Associates, Inc. Plaintiffs maintain that the City owed no duty to the Lummi Nation, Larry Freeman, or L. Freeman and Sons Construction, that it was not negligent toward any of those entities, and that it therefore cannot be found “solely negligent” for any of the damages or injuries they suffered.

Plaintiffs’ motion is an untimely request for summary judgment. Plaintiffs seek a dispositive ruling that the City is not, as a matter of law, negligent and that the exception to the

ORDER DENYING PLAINTIFFS’ MOTION IN LIMINE
REGARDING ALLEGED ACTS OF NEGLIGENCE

1 hold harmless provision of the Professional Services Agreement does not apply. The deadline
2 for dispositive motions passed long ago, however, and plaintiffs have made no attempt to explain
3 why this matter could not have been timely raised.

4 Even if the Court were to consider plaintiffs' motion on its merits, there are
5 genuine issues of fact which preclude a finding that, as a matter of law, plaintiffs did not owe
6 and/or breach a duty owed to the Lummi Nation or Larry Freeman. Contrary to plaintiffs'
7 arguments in reply, there is evidence in the record from which one could conclude that the City,
8 knowing of the Lummi's special interest in and historical relationship to the Semiahmoo site, cut
9 corners (*i.e.*, did not use ordinary care) when it came to its own and its contractors' monitoring,
10 notice, and oversight activities. Further, there is evidence that the City knew or should have
11 known that defendants had failed to comply with the terms of the Memorandum of Agreement at
12 all times after July 8, 1999, and yet failed to take corrective action. To the extent the jury
13 accepts defendants' interpretation of the evidence, it would be possible to conclude that the City
14 had its own obligations toward the Lummi, the breach of which caused damage to the Lummi
15 and the Freeman entities independent of defendants' failure to carry out their duties under the
16 Memorandum of Agreement.

17
18 For all of the foregoing reasons, plaintiffs' motion in limine regarding alleged acts
19 of negligence on the part of the City of Blaine is DENIED.

20 DATED this 20th day of September, 2005.

21
22 

23 Robert S. Lasnik
24 United States District Judge
25
26